

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 LUIS A. MARTINEZ,) No. C 12-02918 EJD (PR)
12 Petitioner,) ORDER TO SHOW CAUSE
13 vs.)
14 THE STATE OF CALIFORNIA,)
15 Respondent.)

18 Petitioner, a state prisoner incarcerated at the California Substance Abuse
19 Treatment Facility, has filed a pro se petition for a writ of habeas corpus under 28
20 U.S.C. § 2254, challenging his state conviction. Petitioner has paid the filing fee. The
21 original petition was dismissed with leave to amend as it was a mixed petition
22 containing exhausted and unexhausted claims. Petitioner has filed an amended
23 petition.¹ (Docket No. 18.)

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27 ¹ Petitioner was given the option to file a stay to exhaust the new claims or remove the new
28 claims and proceed only on the exhausted claim. Petitioner has chosen to continue solely on
the exhausted claim. (Docket No. 19.)

BACKGROUND

According to the petition, Petitioner was found guilty after trial in Contra Costa County of committing corporal injury on a spouse and inflicting great bodily injury while committing domestic violence. (Pet. 2-3.) On February 18, 2011, Petitioner was sentenced to seven years in state prison. (*Id.* at 1.)

Petitioner appealed the conviction; the state appellate court affirmed the conviction and the state high court denied review. (*Id.* at 3.)

DISCUSSION**A. Standard of Review**

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

B. Legal Claims

Petitioner claims the following ground for federal habeas relief: (1) the trial court erred by allowing prior bad acts to be admitted into evidence.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the amended petition (Docket No. 18) and all attachments thereto on Respondent and Respondent’s attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the court and serve on petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas

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1 corpus should not be issued. Respondent shall file with the answer and serve on
2 Petitioner a copy of all portions of the state trial record that have been transcribed
3 previously and that are relevant to a determination of the issues presented by the
4 petition.

5 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse
6 with the Court and serving it on Respondent within **thirty (30) days** of his receipt of
7 the answer.

8 3. Respondent may file a motion to dismiss on procedural grounds in lieu of
9 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
10 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file
11 with the Court and serve on Respondent an opposition or statement of non-opposition
12 within **thirty (30) days** of receipt of the motion, and Respondent shall file with the
13 court and serve on Petitioner a reply within **fifteen (15) days** of receipt of any
14 opposition.

15 4. Petitioner is reminded that all communications with the court must be
16 served on Respondent by mailing a true copy of the document to Respondent's
17 counsel. Petitioner must also keep the Court and all parties informed of any change
18 of address.

19 DATED: _____ 1/28/2013 _____


EDWARD J. DAVILA
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LUIS A MARTINEZ,

Petitioner,

v.

Case Number CV 12-02918 EJD (PR)

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA,

Respondent.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/29/2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s)hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) inter-office delivery receptacle located in the Clerk's office.

Luis A. Martinez
AH-2272
CSATF (7100)
PO BOX 7100
900 QUEBEC ROAD
CORCORAN, CA 93212-7100

DATED: 1/29/2013

Richard W. Wiekking, Clerk
/s/By: Elizabeth Garcia, Deputy Clerk